

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2380 OF 2000

Bawa Yoginder Singh Bhalla & Ors. ..Petitioners.

Vs.

Municipal Corporation of Greater

Bombay & Ors.

..Respondents.

....

Ms. Rajani Iyer for the Petitioners.

Mrs. A.R. Joshi for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

2nd February, 2005.

P.C. :

The Petitioners are co-owners of the property situated at Devi Dayal Road, Mulund (West), Mumbai, being land admeasuring 1500 sq. yards bearing plot No.1241 of Survey No.1000 (Part) and CTS No.1109 B. The land is assessed to property tax since 1st April, 1962 as agricultural land and the rateable value thereof came to be fixed initially at Rs.10/-. In the Petition it has

been stated that the land was acquired by the family of the Petitioners as agricultural land under a registered conveyance dated 11th June, 1942. Until the issue of a bill for the period 1st October, 1997 to 31st March, 1998 the property was taxed as land. On an application of the Petitioners for development of the property, the Municipal Corporation issued a commencement certificate on 1st September, 1997. It has been stated that consequently until 1st September, 1997 no construction on the said property could commence or was commenced and the property taxes prior to the aforesaid date were not in arrears. In pursuance of the commencement certificate which was granted, construction activities commenced and on the date of the institution of this Petition (14th November, 2000) it has been stated that the occupation certificate had yet not been applied for or granted. The building, it has been stated, was not fit or capable of being occupied or of being let out. After the commencement of construction, the work was stopped, it has been stated, due to the objections raised by one Mr. Udani through an advocate's letter dated 29th October, 1997 and the filing of a complaint with the Senior Inspector of

Police, Mulund (West). This was followed, it has been stated, by proceedings in Contempt Petition 103 of 1997 in Suit 2849 of 1985 and an order was passed on 26th November, 1997 directing the parties to maintain the status quo. The Contempt Petition was dismissed on 21st December, 1998 and it has been stated that the construction activities actually resumed only in February 1999. On 18th September, 1998 a notice of demand was received by the Petitioners in response where to by a letter dated 30th December, 1998 the Petitioners informed the Assistant Assessor and Collector that no construction had been carried out on the property since 29th November, 1997 in view of an order of status quo passed by this Court. Subsequently, on 7th December, 1999 orders imposing penalties were served on the Petitioners for the period between 1st April, 1997 and 30th September, 1999. On 3rd January, 2000 the Petitioners addressed a representation submitting that the demand of additional property tax on the basis that the land was under construction (LUC) from 1st April, 1997 to 31st March, 1998 was manifestly incorrect, since no building was under construction during that period. The Petitioners contended that the penalty

notices relating to bills on land under construction for the period after the issuance of the commencement certificate on 1st September, 1997 were also without legal validity since they were apparently founded on additional property tax assessed on the ground that the land was under construction on which basis the rateable value of the property was assessed at over Rs.23 lacs. The Petitioners relied upon the judgment of the Supreme Court in the Municipal Corporation of Greater Bombay v. M/s. Polychem Ltd. (AIR 1974 SC 1774).

A warrant of attachment was issued on 17th June, 2000 seeking to attach the property for the nonpayment of the sum of Rs.8,74,787/- allegedly due as property taxes for the period 1st April, 1997 to 31st March, 2000. That led to the institution of these proceedings under Article 226.

On behalf of the Petitioners it has been submitted that the impugned action of the Municipal Corporation is manifestly contrary to the law settled by the Supreme Court in Municipal Corporation of Greater Bombay v. M/s. Polychem Ltd. (supra). An affidavit in reply has been filed on

behalf of the Municipal Corporation in which it is sought to be urged that the proposal submitted by the Petitioners for the development of the property was approved and commencement certificate was issued on 1st September, 1997. The Assistant Assessor and Collector in his affidavit states that the value of land which is under construction is "always on the higher side" than land which is agricultural land. It has been urged that since construction activities are being carried out on the land, the terminology 'land under construction' is used only for identification. In my view, there is merit in the submission which has been urged on behalf of the Petitioners that the whole basis of the revision of assessment in the present case is contrary to the decision of the Supreme Court in Municipal Corporation of Greater Bombay v. M/s.Polychem Limited (AIR 1974 SC 1774). While construing the provisions of the Bombay Municipal Corporation Act, 1888 the Supreme Court held that by definition land includes land which is either being built upon or has been built upon. Land which is vacant or which has not been built upon may be treated for the purposes of valuation, on a different footing from land which has actually been

built upon. But the provisions of the Act, the Supreme Court held, do not mention and take no account, for the purposes of rating, of any building which is only in the course of being constructed. Section 3(r) of the Act makes it clear that the land which is being built upon is also 'land'. The position in law therefore is so long as the building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land for the purposes of rating can be equated with or treated as vacant land. However, when the building which is being built upon is in such a state that it is actually and legally capable of occupation the letting value of the building can be entered into the computation for rating. Section 154 therefore recognizes only two categories for the purposes of letting (i) land and (ii) land upon which a building is constructed and is in a state fit for occupation. The decision of the Supreme Court in Polychem has been followed in several subsequent decisions of the learned Single Judges of this Court. But it is evident from the impugned action that the Municipal Corporation has paid

little heed to the law which has been thus settled. In the present case, the action of the Municipal Corporation is clearly in violation of the settled principles which emerge from the aforesaid decision of the Supreme Court and will have to be quashed and set aside. The penalty orders (Exh.O to S), the demand notice dated 18th September, 1998 (Exh.M), and the warrant of attachment dated 17th June, 2000(Exh.U) are accordingly quashed and set aside. The Third Respondent, the Assessor and Collector, T Ward, is directed to recompute the rateable value after giving an opportunity to the Petitioners of being heard in accordance with law. The Petition shall accordingly stand allowed to the aforesaid extent. There shall be no order as to costs.